

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE HENNEPIN COUNTY HUMAN RESOURCES BOARD

In the Matter of the Dismissal of  
Judith Wryk

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on April 22-25, July 15-18, and August 5, 2008, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101. The parties submitted post-hearing briefs on October 6, 2008, and reply briefs on October 20, 2008. The OAH record closed on October 20, 2008.

Richard T. Wylie, Attorney at Law, appeared on behalf of Judith Wryk ("the Employee").

Sara E. Wahl, Assistant Hennepin County Attorney, appeared on behalf of Respondent Hennepin County ("the County").

**NOTICE**

Under Minn. Stat. § 383B.38, subd. 1a(e), this Order is the final administrative decision in this case. This Order may be appealed to the Minnesota Court of Appeals by the Employee, or by the Employer upon approval of the Hennepin County Board, as set out in Minn. Stat. §§ 383B.38, subd. 1a(e), and 14.63 through 14.68.

**STATEMENT OF ISSUES**

The issues presented in this case are as follows:

- (1) Whether the County has shown just cause to discharge or discipline the Employee.
- (2) Whether the Employee has shown extenuating circumstances justifying modification of the discharge or discipline.
- (3) If extenuating circumstances are shown, what discipline is appropriate?

As described more fully below, the Administrative Law Judge concludes that the County has shown just cause to discharge the Employee, and the Employee has not shown extenuating circumstances justifying modification of the sanction.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. The Employee, Judith Wryk, was employed from 1994 through November 2003 as a Support Services Manager in the Child Support Division of the Hennepin County Department of Economic Assistance.<sup>1</sup> As Support Services Manager for the Hennepin County Child Support Division, the Employee directly supervised two senior-level supervisors, who in turn supervised all of the division support staff, a total of about 24 people.<sup>2</sup> Prior to her employment with Hennepin County, the Employee held supervisory and management positions for a total of approximately 12 years with Dayton's, Northwestern National Life Insurance Company and Health Risk Management, Inc. She earned a B.S. in Business Administration - Management in 2001 and a Certificate in Management in 1983 from the College of St. Catherine.<sup>3</sup>

2. In 2003, during a time of downsizing in Hennepin County, the Employee's position classification within the County's Economic Assistance Department was eliminated, making her eligible to participate in the County's Alternative Placement Program.<sup>4</sup> Under the County's Alternative Placement Program policy during the 2003 layoff process, if the Human Resources Division believed that a person on the layoff list fit the minimal requirements of an available position and could, with about six months of training, learn any skills necessary for the position which the person lacked, the department with the available position was required to either offer the position to the person on the layoff list or leave the position unfilled until the entire layoff process was complete.<sup>5</sup>

3. The Employee was hired into the position of Principal Support Service Supervisor ("PSSS") in the Child Protection Division ("CPD") of the Hennepin County Attorney's Office ("CAO") on November 30, 2003, pursuant to the Alternative Placement Program.<sup>6</sup>

4. In late 2003 and early 2004, a Managing Attorney (Tom Frost) was in charge of the CPD. Three senior attorneys (Sonya Steven, Julie Harris, and Joyce Miyamoto) reported directly to Mr. Frost and oversaw numerous attorneys, paralegals, and law clerks. A Legal Support Services Manager (LSSM) (Teresa Kortus) also reported directly to Mr. Frost. The LSSM oversaw the PSSS who, in turn, supervised seven support staff members.<sup>7</sup>

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<sup>1</sup> Hearing Exhibit (Ex.) 154; Transcript (T.) pages 972-975 (Testimony of Judith Wryk).

<sup>2</sup> Ex. 101.

<sup>3</sup> Ex. 154; T. 963-972 (Wryk).

<sup>4</sup> T. 971; 975 (Wryk).

<sup>5</sup> T. 1059-1062 (Testimony of Rafael Viscasillas).

<sup>6</sup> T. 17 (Testimony of Theresa Kortus) and 544-545 (Testimony of Janey Gohl).

<sup>7</sup> Ex. 27.

5. On September 24, 2003, Ms. Kortus interviewed the Employee for the PSSS position as required by the Alternative Placement program and informed the Employee of the duties involved in and the expectations of this position. Ms. Kortus provided the Employee with a copy of the PSSS job description and the PSSS job posting.<sup>8</sup> Ms. Kortus informed the Employee at this time that the PSSS position was “very much a hands-on position” and that she would be expected to learn and perform the core duties of her staff, including legal secretarial duties, because she would serve as back-up to the legal secretaries.<sup>9</sup> The Employee agreed to this and indicated her willingness to accept the PSSS position in lieu of layoff under Hennepin County Human Resources Rule 10.9.<sup>10</sup>

6. The position in the CAO was a demotion for the Employee, at a lower salary than she had received in her prior position. The Employee described her prior position in the Child Support Division as “comparable to Ms. Kortus’ legal support services manager position but without the legal aspect.”<sup>11</sup>

7. Because the Employee was part of Hennepin County’s Alternative Placement program, she was not placed on the customary six month probationary period. Accordingly, no probationary period performance evaluation was required or provided.<sup>12</sup>

8. The Employee began work in the PSSS position on Dec. 1, 2003. Ms. Kortus provided the Employee with the PSSS job description again on December 1, 2003 and on March 2, 2007. That job description explicitly includes the requirement of performing back-up legal secretarial duties. Because providing back-up to the legal secretaries was a significant component of the PSSS position, Ms. Kortus never told the Employee she would not have to perform core legal secretary duties.<sup>13</sup>

9. All of the Employee’s predecessors in CPD’s PSSS position had performed core legal secretarial duties.<sup>14</sup>

10. Providing back-up legal secretarial support includes typing letters, memos, and proposed orders, and processing trial documents, including subpoenas. It was important for a PSSS to know and perform core legal secretarial duties not only to provide back-up, but also to understand and direct the secretaries’ work.<sup>15</sup>

11. The Employee had never worked as a secretary of any kind and had minimal experience using Microsoft Word word-processing software. She was not

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<sup>8</sup> Exs. 1 and 3; T. 17, 22 (Kortus).

<sup>9</sup> Exs. 1 and 3; T. 23, 978 (Kortus).

<sup>10</sup> Exs. 103 and 104; T. 54-55, 156, 1512-1514 (Kortus).

<sup>11</sup> T. 104 (Testimony of Ruth Thone); T. 973, 1418 (Wryk).

<sup>12</sup> T. 30-31 (Kortus); T. 547-548 (Gohl).

<sup>13</sup> Exs. 1 and 3; T.22-25, 27; 1512-1514 (Kortus).

<sup>14</sup> T. 26-27 (Kortus).

<sup>15</sup> Exs. 1 and 3; T. 26 (Kortus).

familiar with using the many templates for legal documents used in the CPD, nor did she know how to use a typewriter, which was necessary for preparing subpoenas.<sup>16</sup>

12. Beginning in December 2003, the Employee was provided or referred to materials to assist her in learning Microsoft Word.<sup>17</sup>

13. Throughout her employment with the CPD, Ms. Kortus met with the Employee on approximately a weekly basis to help her improve her performance, including her interpersonal interactions with the staff who reported to her.<sup>18</sup>

14. On March 1, 2004, Ms. Kortus sent an email to the legal secretaries in the CPD telling them that she wanted to have the Employee start training with them on their duties. Ms. Kortus indicated that the first area of training should involve "PHR's [Prehearing Reports] and Court Notifications/Requests for orders" and asked them for their input on the order of training in other areas. Ms. Kortus further indicated that she could use the same training schedule as she had used for previous individuals who had served in the PSSS position.<sup>19</sup>

15. On March 2, 2004, Ms. Kortus provided the Employee with a detailed schedule for training for a variety of the tasks she was expected to perform in her capacity as a back-up person for the legal secretaries. This schedule was the one used to train the Employee's predecessor.<sup>20</sup> Ms. Kortus offered to update the schedule for the Employee, but the Employee told Ms. Kortus that she would take care of it herself. The Employee failed to update or follow through on implementing the training schedule.<sup>21</sup>

16. The Employee supervised seven support staff, which included four legal secretaries, two Office Specialist III's and one Principal Office Specialist<sup>22</sup>.

17. The Employee met with her staff as a group for the first time in early January 2004. At that first meeting, she informed the staff that her new PSSS position was a demotion for her and stated that she was applying for other positions, so she was uncertain how long she would remain in the CPD division of the CAO.<sup>23</sup>

18. Vickie Gunstrom was one of the legal secretaries supervised by the Employee. Ms. Gunstrom was working an approved part-time, flexible schedule at the time that the Employee became her supervisor. Ms. Gunstrom was recognized as an

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<sup>16</sup> T. 980, 1414-1416 (Wryk); T. 32-33 (Kortus); T. 109, 117-118 (Thone).

<sup>17</sup> T. 33 (Kortus); T. 1414-1415 (Wryk).

<sup>18</sup> Ex. 20; T. 47, 441-442 (Kortus).

<sup>19</sup> Ex. 4; T. 33 (Kortus).

<sup>20</sup> Ex. 5; T. 33 (Kortus).

<sup>21</sup> Ex. 5; T. 33-35 (Kortus).

<sup>22</sup> Ex. 27; T. 16, 29 (Kortus).

<sup>23</sup> T. 104 (Thone).

outstanding employee who more than carried her fair share of the workload, despite her schedule.<sup>24</sup>

19. In one of the first supervisory meetings Ms. Kortus had with the Employee in 2004, the Employee informed Ms. Kortus that Vickie Gunstrom was “manipulating” her time. Ms. Kortus explained that Ms. Gunstrom was a part-time legal secretary (.75 time); she was not getting compensatory time or time and a half; and she was working within the core hours of the office, consistent with CAO office policy and practice. Ms. Kortus explained to the Employee CPD’s philosophy of flexibility within reason. She told the Employee that she felt the Employee was characterizing Ms. Gunstrom inappropriately, and she coached the Employee to trust her staff because they were trustworthy and had never cheated on their time cards. Ms. Kortus also explained that she had not received any complaints about Ms. Gunstrom not getting her work done or not carrying her share of work with her flexible work schedule.<sup>25</sup>

20. The first time the Employee met alone with Ms. Gunstrom, the Employee remarked, in a tone that struck Ms. Gunstrom as “demeaning and hostile,” that Ms. Gunstrom had “a pretty sweet deal going” with the County as far as her work schedule was concerned.<sup>26</sup>

21. Because the Employee’s negative tone and attitude about Ms. Gunstrom’s schedule made Ms. Gunstrom feel defensive and uncomfortable, Ms. Gunstrom avoided direct contact with the Employee, generally approaching the Employee with requests for schedule changes by e-mail if possible.<sup>27</sup>

22. Despite Ms. Kortus’ directives, the Employee continued to make remarks critical of Ms. Gunstrom’s schedule to others, including Mary Lynch, one of the attorneys with whom Ms. Gunstrom worked.<sup>28</sup>

23. CPD’s receptionist, Dierdre Brown, was a temporary employee employed by Adecco Temporary Agency. She had, however, been assigned to the CPD on a long-term basis.<sup>29</sup> In early 2004, Ms. Brown told Ms. Kortus that she felt the Employee was treating her unfairly and had singled her out. The Employee had criticized Ms. Brown for having occasional visitors in the office, scheduling a doctor’s appointment with a specialist during the work day, and making phone calls even though others in CPD were allowed to do so on occasion in accordance with office policy/practice.<sup>30</sup> Ms. Kortus subsequently coached the Employee that it was not appropriate to teach employees how to interact with their physicians.<sup>31</sup>

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<sup>24</sup> T. 210-211 (Kortus); T. 398 (Testimony of Anne McKeig); T. 628 (Testimony of Tom Frost).

<sup>25</sup> T. 49, 50, 69 (Kortus).

<sup>26</sup> T. 680-681 (Testimony of Vickie Gunstrom).

<sup>27</sup> T. 681-682 (Gunstrom).

<sup>28</sup> T. 683-686 (Gunstrom).

<sup>29</sup> T. 823-824 (Testimony of Dierdre Brown).

<sup>30</sup> T. 37, 39 (Kortus); T. 825-826, 830-831 (Brown); T. 633 (Frost).

<sup>31</sup> T. 39 (Kortus).

24. On January 20, 2004, Ms. Brown called Ms. Kortus at home, upset and in tears, afraid that she would lose her job with Adecco because the Employee had contacted Adecco about the way Ms. Brown filled out her time cards. The Employee had told Ms. Brown that Adecco was very concerned about the way she was filling out her time cards, although Adecco had never before expressed any concerns about the way Ms. Brown filled out her time cards.<sup>32</sup>

25. When Ms. Kortus returned to work, she coached the Employee that she did not have to get involved in issues such as Adecco's time cards because such issues were between Adecco and Ms. Brown. Ms. Kortus thereafter coached the Employee on this issue at least two more times, explaining how upsetting this was to Ms. Brown and emphasizing that there had not been any problems with Ms. Brown in the past.<sup>33</sup>

26. The Employee continued to focus on the Adecco issue, despite instruction from Ms. Kortus to move on to more critical areas like learning the legal secretary duties and managing the Records Center.<sup>34</sup>

27. Ms. Kortus met again with the Employee on February 18, 2004, to discuss her continued interactions with Adecco. At this meeting, the Employee compared Ms. Brown to "Welfare Back to Work people" who not only need help and training in job skills, but in life skills as well. Ms. Kortus was very upset with the Employee's comment and felt it was mean, judgmental, condescending and unjust. Ms. Kortus told the Employee that this comment was inappropriate, stopped the meeting, and stated they needed to bring Tom Frost, who was then the Managing Attorney of CPD, into the meeting.<sup>35</sup>

28. During the subsequent meeting with Mr. Frost on February 18, 2004, the Employee accused Ms. Brown of lying and threatened to go back to Adecco and tell them that "Dierdre was lying." Mr. Frost encouraged the Employee to move on, away from Adecco issues, and to follow Ms. Kortus' lead and coaching because Ms. Kortus knew the CPD support staff well and was confident that they could be trusted.<sup>36</sup>

29. On approximately February 11, 2004, Ms. Kortus temporarily took over as Ms. Brown's supervisor because of Ms. Brown's discomfort with and distrust of the Employee. The Employee resumed her role as Ms. Brown's supervisor sometime in 2005.<sup>37</sup>

30. In late 2004, after the Employee applied for a position as acting LSSM in the Child Support Division, the Director of Administration in the CAO recommended that the Employee participate in the Performance Management Certificate Program because she was not yet ready to be a manager in the CAO. The program primarily involves

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<sup>32</sup> T. 39-41 (Kortus); T. 828 (Brown).

<sup>33</sup> T. 40-41 (Kortus).

<sup>34</sup> T. 42 (Kortus).

<sup>35</sup> Ex. 29 at 9-10; T. 42-44 (Kortus).

<sup>36</sup> Ex. 29 at 13-14; T. 45-46 (Kortus).

<sup>37</sup> Ex. 29; T. 47 (Kortus).

improvement of supervisory skills in dealing with people and management of individual performance.<sup>38</sup>

31. The Employee enrolled in the Performance Management Certificate Program in December 2004.<sup>39</sup>

32. As of December 2004, Ms. Kortus felt that the Employee had not made progress toward learning the secretarial skills she needed to perform her job, including appropriately supervising and backing up the secretarial staff. The only specific tasks on which the Employee had been trained were those on which Ms. Kortus had trained her--doing pre-hearing reports and court notifications.<sup>40</sup>

33. On December 8, 2004, Ms. Kortus gave the Employee an oral evaluation. She told the Employee that she needed to get going on learning computer and legal secretarial skills. She emphasized again that the Employee needed to be able to back up the secretaries when and where necessary and needed to understand and learn general secretarial duties. She told the Employee to start with witness and exhibit lists (also referred to as trial packets), subpoenas, CHIPs and other orders, and to practice typing and computer skills. Ms. Kortus chose to make this first annual performance evaluation oral rather than written in order to give the Employee the benefit of not having a "Needs Improvement" rating in her personnel file at a time when the Employee was interviewing for other positions, which she had been doing since starting in the PSSS position. Ms. Kortus did not give the Employee a written Performance Improvement Plan (PIP) at the time of this oral performance evaluation in December 2004 because the Employee was participating in the Performance Management Certificate Program at that time. As part of that program, the Employee was scheduled to develop an Individual Development Plan in February 2005, outlining the performance areas the Employee would need to address. Ms. Kortus believed the Individual Development Plan would serve the same purpose as a PIP.<sup>41</sup>

34. As part of the Performance Management Certificate Program, employees participate in a "360 degree" program in which feedback is gathered from others to show areas of strength and areas that need improvement. In the case of the Employee, feedback was gathered from Ms. Kortus and from the employees who directly reported to the Employee. Ms. Kortus met with the Employee on January 13, 2005, to go over the results of her 360 degree feedback. They discussed the importance of competency and understanding others. They also discussed learning staff duties and providing backup to them.<sup>42</sup>

35. In late January 2005, the Employee prepared an Individual Development Plan and submitted it to Ms. Kortus for approval. Among other things, the plan included as one of her development goals that she would "Learn Select Legal Secretary Job

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<sup>38</sup> T. 51 (Kortus).

<sup>39</sup> T. 52 (Kortus).

<sup>40</sup> T. 372 (Kortus).

<sup>41</sup> Ex. 6; T. 52, 53, 369-370, 502 (Kortus); T. 550 (Gohl).

<sup>42</sup> T. 55.

Duties” and indicated as observable behavioral changes, “I will be able to perform select Legal Secretary duties and provide coverage” and “I will better understand the challenges experienced by CPD Support Staff and be better able to recommend process/system improvements.” Ms. Kortus approved the plan.<sup>43</sup>

36. On March 23, 2005, during a meeting with Ms. Kortus, the Employee again expressed displeasure about Ms. Gunstrom’s work hours. Ms. Kortus confirmed that none of the staff had complained about Ms. Gunstrom and that the work was getting done. She again coached the Employee to be flexible and to watch her tone.<sup>44</sup>

37. On June 15, 2005, Ms. Kortus once again reminded the Employee that she was expected to learn the secretarial duties and that she should include herself in the secretarial cross-training work as part of this. Ms. Kortus also reminded the Employee that she should learn the secretaries’ “duties in general to be able to back them up where and when needed.”<sup>45</sup>

38. In August 2005, the Employee resumed her supervisory responsibility over Ms. Brown.<sup>46</sup>

39. On September 28, 2005, Ms. Kortus had a conversation with the Employee in which she related her concern that the Employee had not learned the secretarial duties and told her she needed to get moving on learning those duties so that she could perform the back-up function of her job.<sup>47</sup>

40. In late 2005, Christine Spaulding, a legal secretary who joined the CPD in the fall of 2005, became involved in training the Employee on legal secretarial duties. She began with a CHIPS (Child in Need of Protective Services) order, which is the CPD’s most common order, as well as the easiest one to work with.<sup>48</sup>

41. Ms. Spaulding took a file where a CHIPS order was required and sat next to the Employee at the computer, while the Employee was on the computer, telling her and showing her what to do, step by step. The training did not go well. Ms. Spaulding learned “quickly that she [the Employee] didn’t know Microsoft Word at all.” Ms. Spaulding had to explain everything, instructing the Employee to click on each field and what information to type into each field. She observed that the Employee also did not know how to do formatting at all and needed help with that as well.<sup>49</sup>

42. After a time, Ms. Spaulding realized that the Employee was not learning what she was doing, but continued to count on Ms. Spaulding to reiterate at each step what had to be done. Ms. Spaulding decided that the Employee might learn better if she took an order and tried to do it herself, just asking questions as she needed to.

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<sup>43</sup> Ex. 7; T. 55-57 (Kortus).

<sup>44</sup> Ex. 29.

<sup>45</sup> Ex. 29.

<sup>46</sup> T. 47 (Kortus); T. 1035 (Wryk).

<sup>47</sup> T. 57-58 (Kortus).

<sup>48</sup> T. 636, 638 (Testimony of Christine Spaulding).

<sup>49</sup> T. 639 (Spaulding).

Over a period of about a year, Ms. Spaulding tried to train the Employee but found that the Employee constantly asked questions about things they had been over many times, and “just wanted to be told what it is, told what the answer was and then do it. She didn’t want to think for herself or work at it.”<sup>50</sup>

43. In early November 2005, Ms. Kortus was diagnosed with cancer. She had surgery in early December and was out of work for a full month following the surgery. When she returned following the surgery, she continued to be absent from work periodically during the times she was receiving chemotherapy treatments.<sup>51</sup>

44. While Ms. Kortus was out on medical leave, the Employee was appointed Acting LSSM. During that time, she handled reimbursements and some of Ms. Kortus’ other duties, in addition to her own. She handled the administrative duties appropriately, but there were additional staff problems during that time, including problems between the Employee and Ms. Brown described in Findings 45-48 below.<sup>52</sup>

45. In December 2005, Ms. Brown went to the Emergency Room at Hennepin County Medical Center (HCMC) (which is down the block and across the street from the CPD office) because she was feeling dizzy. Ms. Brown was accompanied, with the Employee’s approval, by Ruth Thone. The Employee came over to HCMC several hours later to check on them and to find out why they had been gone so long. The Employee did not ask Ms. Brown for information but instead approached an Emergency Room nurse, who refused to talk to her about Ms. Brown. Ms. Brown and Ms. Thone felt that the Employee did not trust them. Ms. Brown was also upset that the Employee inappropriately tried to talk to the nurse. Ms. Brown did not leave the ER until 11:00 that evening, after her high blood pressure was controlled.<sup>53</sup>

46. The Employee reported this ER visit to Adecco, and told Ms. Brown when she returned to work the next day that Adecco was requiring her to submit a doctor’s statement of fitness before she could return to work. This was not required by the CAO policies or practices, and it was not the Employee’s responsibility to contact Adecco about Ms. Brown’s emergency absence.<sup>54</sup> In addition, the Employee previously had been told by Ms. Kortus and Mr. Frost not to interfere in Ms. Brown’s relationship with Adecco.

47. A day or two after Ms. Brown’s ER visit, Julie Harris, who was then the managing attorney for the CPD, came upon Ms. Brown late in the afternoon, sobbing at her desk. Ms. Brown was upset because she did not know how she was going to get a statement from an ER doctor and because she would have to miss work to do so. As an Adecco employee, Ms. Brown was not paid for time she did not work. Furthermore,

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<sup>50</sup> T. 640 (Spaulding).

<sup>51</sup> T. 63 (Kortus).

<sup>52</sup> Ex. 108; T. 434-436 (Kortus).

<sup>53</sup> T. 835-836 (Brown); T. 732 (Testimony of Julie Harris).

<sup>54</sup> T. 735 (Harris); T. 837 (Brown).

Ms. Brown was scheduled to leave for her vacation in a day or two and was very concerned about getting her work done.<sup>55</sup>

48. The next day, Ms. Brown did not come to work but instead went to her own doctor. When she was unable to get a statement from her doctor, she went to HCMC's ER, where she waited for hours in the waiting room in an effort to get a statement from a doctor allowing her to return to work. In the meantime, Ms. Harris talked to the Employee and had her re-contact Adecco. Adecco clarified that Ms. Brown did not need to stay away from work until she got the statement, but could be at work and arrange to get the statement over the telephone and fax machine. Ms. Harris went to the ER to tell Ms. Brown this and assisted Ms. Brown in getting a doctor's statement. The Employee's actions on the day Ms. Brown first went to the ER needlessly put Ms. Brown through emotional trauma and caused her to miss work to take care of a problem that the Employee created by calling Adecco when she should not have.<sup>56</sup>

49. Sometime in 2005, secretary Ruth Thone began work on a Support Staff Assignments document listing each member of the support staff along with her assigned duties and backup assignments. Later, Ms. Kortus requested that the Employee finish the document with this information. The document was finished in December 2005.<sup>57</sup> Ms. Kortus did not review the document closely right away, so she did not notice that the Employee had removed any mention of legal secretary backup among her own duties.<sup>58</sup> Prior to the time that the Support Staff Assignments list was completed, Ms. Kortus had emphasized, on more than one occasion, that the Employee's duties included backup secretarial support. Ms. Kortus' statements to the Employee were consistent with the PSSS job descriptions and posting.<sup>59</sup> When Ms. Kortus realized in June of 2006 that the Employee had deleted secretarial backup from her list of duties, Ms. Kortus sent an e-mail to the Employee directing her to restore and include those duties in the Employee's assigned tasks as identified in the Support Staff Assignments document.<sup>60</sup>

50. During 2006, the legal secretaries conducted more training with the Employee, attempting to teach her to perform their core duties. Ms. Thone made specific suggestions to the Employee about an approach that would help her keep track of the various templates, but the Employee did not follow her advice. As late as the summer of 2007, the Employee still required significant support from the secretaries in order to perform basic secretarial tasks.<sup>61</sup>

51. On Tuesday, May 9, 2006, Ms. Gunstrom approached the Employee and asked for time off on the following Monday for her children's appointments. Ms. Gunstrom also asked for permission to make up some time on the following Tuesday.

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<sup>55</sup> T. 732-734 (Harris).

<sup>56</sup> T. 732-734 (Harris).

<sup>57</sup> Ex. 107; T. 383-386 (Kortus).

<sup>58</sup> Ex. 107, T. 386 (Kortus).

<sup>59</sup> Ex. 1-3; T. 505-506 (Kortus).

<sup>60</sup> Ex. 111, T. 505-506 (Kortus).

<sup>61</sup> T. 116-119 (Thone).

At this time the Employee told Ms. Gunstrom that she was trying to get more time than she was entitled to by making up time to take extra days off. Ms. Gunstrom asked the Employee how it was that she thought this, and she received no answer. Ms. Gunstrom then asked again in a louder voice how it was that the Employee thought she was trying to get extra time off. The Employee told her it was inappropriate for her to raise her voice. Ms. Gunstrom apologized for raising her voice, but repeated that she wanted to know how the Employee felt she was getting extra time off. The Employee then told Ms. Gunstrom to come into her office and sit down and close the door. Ms. Gunstrom refused, and the Employee said she was going to document the refusal. Ms. Gunstrom said that she wanted Ms. Kortus in on the conversation, to which the Employee responded “go get your friend Teresa and Tom Frost too.” Ms. Gunstrom was especially surprised by the comment because Tom Frost was no longer working in the CPD.<sup>62</sup>

52. Several other people overheard the argument between Ms. Gunstrom and the Employee. Judge Anne McKeig, who was an attorney in the CPD at the time, had worked with Ms. Gunstrom for about six years and rated her a ten on a scale of one to ten as a responsible employee.<sup>63</sup>

53. Judge McKeig was sitting in her office, two doors down the hall from the Employee’s office, when she overheard Ms. Gunstrom engaged in conversation with the Employee at the Employee’s office door. First she heard Ms. Gunstrom asking for permission to alter her hours. Then, the Employee “launched into [lambasting] her about that, saying that this a habit, becoming a habit, and told Ms. Gunstrom that she was trying to get some advantage or getting extra hours or something to that effect by changing her work schedule.” Judge McKeig recalls that Ms. Gunstrom responded by asking how the Employee thought she was trying to get extra hours or extra time and the Employee responded again that Ms. Gunstrom’s behavior was “becoming a habit, and you can’t be doing this.” Judge McKeig then overheard Ms. Gunstrom say that she wanted Ms. Kortus present for the conversation, and the Employee responded “Oh, do you want to get your friend Tom Frost in here too.”<sup>64</sup>

54. Judge McKeig left her office and was met in the hallway by Doris Buerkle, a paralegal whose office was between hers and the Employee’s. They proceeded to the Employee’s office where Judge McKeig stopped the argument and took Ms. Gunstrom to Ms. Kortus’ office, where another secretary, Ruth Thone, had already gone to alert Ms. Kortus to the disturbance. Judge McKeig left Ms. Gunstrom in tears in Ms. Kortus’ office.<sup>65</sup>

55. Ms. Kortus and the Employee met alone following the Employee’s confrontation with Ms. Gunstrom. During this meeting, Ms. Kortus again coached the Employee, reminding her that Ms. Gunstrom’s flexible schedule within the core hours of the CPD office was consistent with office policy and that flexibility to accommodate

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<sup>62</sup> Ex. 24; T. 686-687 (Gunstrom); T. 1095-1099 (Wryk).

<sup>63</sup> T. 393, 396, 398 (Testimony of Anne McKeig).

<sup>64</sup> T. 396-397 (McKeig).

<sup>65</sup> T. 397 (McKeig).

employee's needs when possible was also consistent with office policy. Ms. Kortus confirmed that work was getting done and that other staff had not complained at all about Ms. Gunstrom. She reiterated that the Employee's staff were trustworthy and that she was confident based on her own experience supervising the same staff. She also coached the Employee that she needed to relax more and learn to work with ambiguity.<sup>66</sup>

56. Later, following a conversation that included the Employee and Ms. Gunstrom, Ms. Kortus continued her conversation with the Employee, trying to understand what her concerns were regarding Ms. Gunstrom's schedule and reminding her of the importance of tone when talking with staff and of the importance of earning the trust of the staff. Ms. Kortus stated that the Employee needed "to be a partner in [the staff's] work and not just a supervisor" and that that was one reason the Employee needed to work harder to learn secretarial duties.<sup>67</sup>

57. Following the May 9, 2006, incident, Judge McKeig spoke with Managing Attorney Julie Harris about her concerns about the Employee's treatment of the support staff. Judge McKeig asked Ms. Harris to do something because they could not live without the legal secretaries. In her view, on a scale of one to ten, the morale among the support staff was in the negative.<sup>68</sup>

58. Sharon Adams, who worked part-time as a support staff person, e-mailed Ms. Kortus after the May 9, 2006, incident, to report that she, too, had overheard some of the conversation between the Employee and Ms. Gunstrom. Ms. Adams wanted Ms. Kortus to be aware that the Employee did allow Ms. Adams to make up time.<sup>69</sup>

59. Ms. Thone also reported the following concerns about the Employee to Ms. Kortus following the May 9 incident:

- The Employee did not allow secretaries to help out others when they made up time, but could only do their own work;
- The Employee made inappropriate comments to Ms. Adams about Ms. Gunstrom's time off;
- The Employee made inappropriate requests to Ms. Thone when her uncle died;
- The Employee required Ms. Thone to take vacation rather than sick time when Ms. Thone had to take her mother-in-law to the doctor;

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<sup>66</sup> T. 70-71 (Kortus); Ex. 24.

<sup>67</sup> Ex. 24.

<sup>68</sup> T. 397-398 (McKeig).

<sup>69</sup> Exs. 24, 30; T. 71 (Kortus).

- The Employee inappropriately asked Ms. Thone why she needed to make two doctors' appointments in one week;
- The Employee had problems with staff going to training because of her concerns about coverage;
- Ms. Thone did not want to go to the Employee's office any more because she did not trust that her words would not be twisted by the Employee, so she was trying to communicate with her only via e-mail.<sup>70</sup>

60. On May 17, 2006, Sharon Adams sent an e-mail to the Employee, Ms. Kortus and Ms. Harris. In the e-mail, Ms. Adams expressed her concern and frustration because, almost three weeks after Ms. Adams asked to have the opportunity to learn certain Records Center procedures, she had received no answer to her request. Ms. Adams had asked the Employee, who supervised both Ms. Adams and Bob Vanlaningham, the Records Center staff person, to speak to Mr. Vanlaningham about providing Ms. Adams with the files she needed to familiarize herself with the process. After a delay of nearly three weeks, Ms. Adams had not received either the files or a direct response. Ms. Adams' attempts to handle this problem directly with Mr. Vanlaningham were unsuccessful, and the Employee failed to help to resolve the issue.<sup>71</sup>

61. After receiving the e-mail, Ms. Kortus intervened with Mr. Vanlaningham and resolved the underlying problem, which was his failure to keep up to date with entering and opening cases for Records Center purposes.<sup>72</sup>

62. In an effort to give the Employee opportunities to perform and learn legal secretarial duties, she was assigned to three different attorneys at various times. These attorneys were Sonya Steven, Patty Moses, and Karin Chedister.<sup>73</sup>

63. The Employee was assigned to support Sonya Steven in January 2006. Ms. Steven is a Senior Assistant County Attorney who does mainly administrative work and does not require much secretarial support. She estimated that she would give a legal secretary something to do about twice a month. During the approximately 16 months that the Employee was assigned to perform secretarial work for Ms. Steven, she gave the Employee maybe three things to do, mainly correspondence and things of that nature. The end product was acceptable but she was surprised that the Employee thought her simple tasks were big projects. At times, if she just wanted something completed and sent out, Ms. Steven did the work herself. She also gave work to Ruth Thone, who had been Ms. Steven's secretary in the past. Ms. Thone was not aware,

<sup>70</sup> Exs. 24, 25; T. 70 (Kortus); T. 113, 115-116, 168-176 (Thone).

<sup>71</sup> Ex. 109; Kortus T., pages 75-76; Wryk T., page 1121.

<sup>72</sup> T. 74, 76 (Kortus).

<sup>73</sup> Ex. 107; T. 745-746 (Harris).

until almost two years after the fact, that the Employee had been assigned to be Ms. Steven's secretary.<sup>74</sup>

64. Ms. Kortus gave the Employee a written performance evaluation dated June 22, 2006, signed by Ms. Kortus July 31, 2006, with an overall performance rating of "Needs Improvement." The Employee received "needs improvement" ratings on the following specific performance factors identified on the appraisal:

- Completion of work as specified (quality) regarding coverage duties
- Completion of work on schedule (timeliness) regarding coverage duties
- Quantity of work completed
- Interpersonal skills
- Communication skills (speaking)
- Personal adaptability
- Personal motivation in connection with her coverage duties
- Occupational/technical knowledge in connection with her coverage duties
- Cognitive skills

The Employee received "fully capable" ratings for completion of work as specified (quality) with respect to administrative duties; completion of work on schedule (timeliness) with respect to administrative duties; attendance/punctuality; organizational skills; communication skills (writing); personal motivation (administrative duties); and occupational/technical knowledge (administrative duties). The narrative pointed out that, although the Employee's strength lies in her administrative skills, the PSSS position is only 30% administrative. It stated that the Employee "has been reluctant in learning support staff duties" and that "she has failed to use her time effectively to learn some of the more critical functions of her job." The interpersonal and communication skills portion of the evaluation discussed the Employee's failure to de-escalate conflict, her tendency to speak provocatively to staff and her difficulty in accepting critical feedback without becoming defensive and blaming others. In discussing the conflicts with staff, Ms. Kortus noted that she had "particular cause for concerns as these conflicts have involved several different support staff with no prior history in this division of supervisory conflict." Under the section that discusses achievement or progress toward goals from a previous evaluation, Ms. Kortus stated that there had not been a formal written evaluation before this one, but that, in January 2005, the Employee was given a goal of performing "legal secretarial duties" and providing coverage. She concluded that, "For a year and a-half, Judith did not work toward this goal and did not perform legal secretarial duties with the exception of processing court reports. It is only recently that Judith has begun working toward this goal with the assignment of another attorney to her workload."<sup>75</sup>

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<sup>74</sup> T. 523-525, 535 (Testimony of Sonya Steven); T. 179-180 (Thone); T. 229-230 (Kortus).

<sup>75</sup> Ex. 8; T. 77-82 (Kortus).

65. The role of the secretarial staff, including the Employee, in court reports and pre-hearing reports involved taking reports that had been written by social workers and reviewed and approved by CPD attorneys and forwarding them electronically to the other appropriate parties involved in the case.<sup>76</sup>

66. A “Goals” section, or a Performance Improvement Plan (“PIP”) was included in the June 2006 evaluation. The PIP was aimed at helping the Employee achieve proficiency in the critical areas required for her position, including technical secretarial skills and the interpersonal and supervisory skills that she had consistently failed to perform adequately. Among other things, the Employee was required to learn and proficiently perform legal secretary duties; reduce conflicts with her direct reports and be respectful in her tone, manner and choice of words; attend a training session on “Emotionally Healthy Work Environments - Tools for Managers and Supervisors” due to the good deal of stress support staff was experiencing due to the Employee’s management style and her interactions with them; and continue to meet weekly with Ms. Kortus. The “Goals” section of the evaluation also stated that there would be a follow-up evaluation in six months “[d]ue to the critical nature of [the listed] goals.”<sup>77</sup>

67. Although the Employee stated that the Performance Evaluation did not hold any surprises for her, the Employee declined to sign it because she said that she did not feel that it reflected her work in the CPD.<sup>78</sup>

68. The Employee completed the “Emotionally Healthy Work Environments – Tools for Managers and Supervisors” class on September 26, 2006.<sup>79</sup>

69. On September 27, 2006, at the Employee’s request, Ms. Kortus provided her with a written discussion of the progress the Employee had made toward the goals set forth in her PIP. She noted that the Employee had made good progress in providing front desk coverage, had responded attentively to input from her direct reports, had done a good job of facilitating the creation of a support staff manual for the division, and was working on becoming a team player. At that point, Ms. Kortus believed that the Employee was making some progress toward her goals but she still was not adequately performing legal secretarial duties. Ms. Kortus indicated that the Employee needed to continue to work on practicing secretarial tasks, reducing conflict, and improving her computer skills.<sup>80</sup>

70. The Employee completed the “Learning Word” course on October 9, 2006, and the “Intermediate Word” course on November 1, 2006. She completed the “Mastering Word” course on August 24, 2007.<sup>81</sup>

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<sup>76</sup> T. 61 (Kortus).

<sup>77</sup> Ex. 8; T. 84-87 (Kortus).

<sup>78</sup> Ex. 8; T. 82-83 (Kortus).

<sup>79</sup> Exs. 12, 23.

<sup>80</sup> Ex. 12; T. 192-194.

<sup>81</sup> Exs. 23, 150.

71. The Employee was assigned to Patty Moses sometime in 2006 until Ms. Moses left the CPD in January of 2007. Because of management's continuing concerns that the Employee was not learning the duties of the legal secretaries, Ms. Moses, who supervised a litigation team and handled her own cases, volunteered to have the Employee assigned to her. Ms. Moses met with the Employee and talked about her expectations. She brought the Employee to court to observe some hearings to help her get an understanding of CPD's work. The Employee required a lot of information and explanation on virtually every assignment Ms. Moses gave her. Most of the work Ms. Moses gave to the Employee was already typed into templates and just had to be formatted. After a while, Ms. Moses became frustrated because the Employee still did not understand the process. When Ms. Moses needed something quickly, she would give it to Christine Spaulding or even do it herself because she did not have time to repeatedly explain things to the Employee.<sup>82</sup>

72. Ms. Moses needed to file proposed findings and an order with the court by the end of the day on Monday, December 11, 2006. She told the Employee she would be working on the document over the weekend and would give it to her on Monday morning. Late Monday morning, Ms. Moses finished making edits and gave the Employee the document to format. Ms. Moses had typed the document. It only needed to be formatted, so all of the paragraphs would be numbered correctly, and a cover letter needed to be prepared. In Ms. Moses' experience, it was a reasonable request to have the job completed before 4:30 because it would take most legal secretaries about two hours to do the project.<sup>83</sup>

73. The Employee apparently misunderstood the nature of the project, believing that Ms. Moses wanted her to proofread a large batch of exhibits. The Employee spent over an hour proofreading the exhibits and found Ms. Moses at the office holiday party to tell her that that part of the task was complete. Ms. Moses returned to the Employee after the holiday party lunch to assist her with the remaining parts of the project. It became clear that the Employee was having difficulty, and Ms. Moses had to step in and help her. Ruth Thone also had to provide some assistance to the Employee. Ms. Moses took the document from the Employee so she could add something and asked her to do the cover letter. When Ms. Moses returned 30 minutes later she found the Employee still working on the cover letter, so she worked on the formatting herself while the Employee continued to work on the cover letter. Ultimately the proposed findings and order and cover letter were not completed until 5:00 p.m., although they had been due at 4:30 p.m. Ms. Moses walked the document over to the Judge's chambers and apologized for filing the document late.<sup>84</sup>

74. In December, 2006, attorney Karin Chedister called CPD from the courtroom and requested that someone print out a template of a "TPR Packet," which included an Affidavit of Voluntary Termination of Parental Rights (TPR), and bring it to her in the courtroom for signature by a parent during a court proceeding. The call came

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<sup>82</sup> T. 601-606 (Testimony of Patty Moses).

<sup>83</sup> T. 606-607 (Moses).

<sup>84</sup> T. 1192-1197 (Wryk); T. 607-609 (Moses).

at a time when the legal secretaries were not around, so Mr. Vanlaningham asked the Employee to respond to the request. After waiting approximately ten minutes, Ms. Chedister called back, concerned at the delay. Mr. Vanlaningham assured her that the Employee was taking care of her request. Meanwhile, the Employee was unable to find the requested document. After spending some time looking on the computer for the document, she went to Todd Fellman, one of the attorneys in CPD, and asked whether he knew how to find the TPR documents. Mr. Fellman said he probably did, but he asked for a few moments to finish what he was doing. The Employee left Mr. Fellman and returned to her office. In the meantime, concerned about the mother who had now been waiting about 20 minutes to sign the TPR, Ms. Chedister went back to the CPD office. Mr. Fellman let her know that he had printed the TPR template. Ms. Chedister took it from him and returned to the courtroom.<sup>85</sup>

75. The Employee stated that she had updated all of the CPD templates, starting in January 2005. Nonetheless, a year and a half later, the Employee was unable to find the template for the Voluntary Affidavit of TPR.<sup>86</sup>

76. In December 2006, three years after she began work at CPD, the Employee did not know how to use a typewriter, which was used for subpoenas. In many areas of the secretarial work, the Employee continued to need a lot of assistance and explanation.<sup>87</sup>

77. As required in the goals set forth in the Performance Improvement Plan of the June 2006 Evaluation, Ms. Kortus gave the Employee a written follow-up performance evaluation. The follow-up evaluation was dated February 21, 2007, and signed by Ms. Kortus on March 6, 2007. Ms. Harris and Ms. Kortus met with the Employee on March 6 to discuss the evaluation. While the Employee had made some progress on her goals of 2006, she was still not able to perform legal secretarial duties proficiently or efficiently. In addition, the Employee had not made progress in the key area of interpersonal skills. She continued to react defensively to constructive criticism or feedback, minimize her own inappropriate behaviors or blame others, and escalate rather than de-escalate conflicts. Those supervised by the Employee were more tense and stressed than ever, and they did not trust the Employee or feel that they could go to her with their concerns. Because of her failure to improve either her technical or her interpersonal skills, the Employee was once again given a "Needs Improvement" rating. The Employee again refused to sign this performance evaluation. Ms. Harris told the Employee during the March 6, 2007, meeting that the performance evaluation was an accurate assessment of her present skill level and areas in which she needed to improve.<sup>88</sup>

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<sup>85</sup> T. 345-347 (Testimony of Karin Chedister); T. 1269-1271 (Wryk).

<sup>86</sup> T. 1147; 1521-1522 (Kortus).

<sup>87</sup> Ex. 32, T. 1521 (Kortus).

<sup>88</sup> Exs. 8; 15, 16; T. 236-242 (Kortus).

78. In March of 2007, Ms. Kortus updated the PSSS job description and went over it with the Employee. Items B<sup>89</sup> and J<sup>90</sup> remained as core duties for the PSSS position and were never removed or assigned to anyone else.<sup>91</sup>

79. The Employee and Ms. Kortus met on several occasions with Janey Gohl, a County Human Resources Generalist assigned to work with the CAO. In approximately April 2007, Ms. Kortus and the Employee met with Janey Gohl to discuss the results of a second 360 degree assessment of the Employee, administered early in 2007 to gain a better picture of the Employee's all-around performance by including a broader pool of people for feedback.<sup>92</sup> Ms. Gohl also had discussions with the Employee and Ms. Kortus focusing on the expectation that an employee would follow the directions of her manager and the possibility that, if the Employee's behavior did not change, she could receive a reprimand or even be terminated.<sup>93</sup> In addition, Ms. Gohl engaged in conversation with the Employee about her other employment interests, including whether she might be interested in another job, possibly with payroll responsibilities, within the County. The Employee rejected this idea, focusing only on her desire for a management job.<sup>94</sup> Ms. Gohl also met privately with the Employee, at the Employee's request. On some occasions, the Human Resources Department psychologist was included in these meetings, which often ran longer than a typical meeting of this type.<sup>95</sup>

80. The Employee was assigned to work for Karin Chedister in May 2007. Ms. Chedister typically is well-organized and does not usually have work that must be done in a rush. After about six weeks of working with the Employee, Ms. Chedister felt she could no longer work with her because of rude behavior by the Employee. Ms. Chedister felt the Employee was rude, sour, and unpleasant. The Employee never asked questions about how Ms. Chedister wanted things done. When Ms. Chedister asked the Employee what was wrong, she replied, "I told you before, I am not a secretary, and I didn't ask to do this." Because of this statement, and the Employee's unpleasant attitude, Ms. Chedister asked Ms. Kortus on June 26, 2007, to be reassigned to a different secretary.<sup>96</sup>

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<sup>89</sup> Item B stated as follows:

**Serve as Back-up to Legal Secretaries:**

- Type letters, memos, proposed orders, subpoenas and other court documentation
- Distribute Signed Orders to Social Workers' Compensation Act
- Prepare files for closing.

Ex. 2 (emphasis in original).

<sup>90</sup> Item J stated in bold, "**Serve as Back-up to Office Manager and Support Staff.**" Ex. 2.

<sup>91</sup> T. 25-26 (Kortus).

<sup>92</sup> T. 555-559 (Gohl).

<sup>93</sup> T. 569-570 (Gohl).

<sup>94</sup> T. 570-571 (Gohl).

<sup>95</sup> T. 582-585 (Gohl).

<sup>96</sup> Exs. 26, 31; T. 347-350 (Chedister).

81. Having to reassign Ms. Chedister's attorney work to another secretary caused additional work for the remaining secretaries. This placed further stress on the limited resources of the division.<sup>97</sup>

82. The Employee stated it took 80-90% of her time to provide support to Ms. Chedister in May and June of 2007, which Ms. Kortus determined was neither proficient nor efficient. Even after four years in the PSSS job, and a full year after her written "Needs Improvement" evaluation of July 2006 with the specific direction to learn and perform legal secretary duties as set forth in the PSSS Job Description, the Employee was unable to process legal secretary work in an efficient manner. The Employee needed to ask her staff for back-up support for Ms. Chedister at a time when she was supposed to be providing substantial back up to them due to a secretarial vacancy in the division and when these secretaries had taken on extra attorneys.<sup>98</sup>

83. In May 2007, the Employee completed performance reviews of two individuals on her staff. Ms. Kortus had a number of concerns with the performance reviews and coached the Employee to make changes in the evaluations, encouraging her to expand on certain points, edit unnecessary language and to clarify or correct certain statements. The Employee changed the evaluations as directed by Ms. Kortus but did not sign the final copies of the evaluations, or inform Ms. Kortus that she was choosing not to sign them. Some weeks later, Ms. Kortus was filing her copies of the evaluations in her office and discovered that they were never signed by the Employee. When she asked the Employee for signed copies, the Employee informed her that she had not signed them because she did not feel comfortable signing them. The Employee also mentioned that she had not signed a third evaluation done in October 2006 where Ms. Kortus had had her make a number of changes. Ms. Kortus was concerned that the lack of a supervisor's signature would cause problems with the county Administrator and the Human Resources office and asked that the Employee determine whether her failure to sign the evaluations had caused a delay in the evaluations being processed.<sup>99</sup>

84. On July 13, 2007, following her discovery of the unsigned evaluations, Ms. Kortus issued a formal written reprimand to the Employee, citing her failure to sign the evaluations, her reluctance to accept feedback and coaching, and her failure to act in a forthright manner when she neglected to tell Ms. Kortus that she would not sign the evaluations. The final sentence of the reprimand warned the Employee "that continued, unprofessional conduct can lead to further discipline, up to and including dismissal."<sup>100</sup>

85. Ms. Kortus gave the written reprimand to the Employee and read it to her, on July 17, 2007. The Employee responded by blaming Ms. Kortus' criticisms of her on the May 9, 2006, incident with Ms. Gunstrom.<sup>101</sup>

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<sup>97</sup> Ex. 26.

<sup>98</sup> T. 263-265 (Kortus).

<sup>99</sup> Exs. 115, 152, 153; T. 283-293 (Kortus).

<sup>100</sup> Ex. 18 at 1.

<sup>101</sup> T. 294 (Kortus).

86. On July 24, 2007, Ms. Kortus discussed coverage of the secretaries' work with the Employee. At that time, although they were short-staffed, the Employee stated that the secretaries did not need help. Ms. Kortus disagreed, telling the Employee that the secretaries were not asking for her help because she worked so slowly that they were afraid that work would not get done in a timely manner and because she asked so many questions when they gave her work that it was easier for them to do it themselves.<sup>102</sup>

87. After receiving an e-mail from Ruth Thone about the secretaries' frustrations with the Employee's lack of back-up support for them, Ms. Kortus again spoke with the Employee. Ms. Thone's memo stated that she had asked the Employee to take three orders to process within the next couple of days and that the Employee had refused, telling her to take them back because the Employee had too much to do. Ms. Kortus reminded the Employee that it was not appropriate that Ms. Kortus had to be the one monitoring and directing the work of the secretaries and choosing when and what to give to the Employee to do. Ms. Kortus again tried to coach the Employee about effective ways in which she could approach the secretaries to inquire about their workload and how she could assist them. Even after this conversation, Ms. Kortus was aware of the Employee taking only "a few items" during the month of August from the secretaries.<sup>103</sup>

88. Ms. Thone had concerns about the lack of organization in the Records Center and its annex. In mid-August 2007, she e-mailed all of the secretaries and support staff, along with the Employee and Ms. Kortus, with some suggestions for better organization. Ms. Thone asked the Employee to put the subject on the agenda for the secretaries' meeting that week after the Employee requested agenda items for that meeting. The Employee responded by cancelling the meeting, saying there was not enough of an agenda to have a meeting. This was not the first time that the Employee had cancelled a meeting after Ms. Thone tried to get the Records Center issue on the meeting agenda. The same thing had happened in January of that year.<sup>104</sup>

89. After cancelling the meeting, the Employee went to Ms. Thone and told her that the Records Center issue was Ms. Thone's problem, not the Employee's problem. The Employee also consulted each of the other secretaries individually, asking what they thought of the Records Center problem. Ms. Thone became so distressed at how the Employee was handling the issue and wasting everyone's time, that she was reduced to tears. She was particularly concerned that the other secretaries would find the Employee's interruptions too distracting. Judge McKeig found her in tears and got Ms. Miyamoto, who was the senior attorney in charge at that point (others more senior than she was were out, as was Ms. Kortus). Ms. Miyamoto brought Ms. Thone to her office to talk. As a result of their conversation, Ms. Miyamoto wrote an e-mail to all the support staff reminding them to minimize interruptions during the ensuing days when no one from the management team would be present. Although

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<sup>102</sup> T. 294-296 (Kortus).

<sup>103</sup> T. 298-300 (Kortus).

<sup>104</sup> Exs. 135, 136; T. 187-189 (Thone).

the e-mail was addressed to all of the support staff, Ms. Miyamoto hoped that it would especially keep the Employee from interfering with the secretaries' work.<sup>105</sup>

90. While she was at home on vacation in August 2007, Ms. Kortus became aware that there was a difficult situation brewing in the CPD office. Ms. Kortus felt that the situation was serious enough that she came into the office during her vacation to try to address Ms. Thone's concerns.<sup>106</sup>

91. Ms. Kortus met with the three secretaries on August 21, 2007, and heard their concerns about the Records Center and about the Employee's treatment of Ms. Thone. One of the secretaries, Christine Spaulding, stated that she believed that the Employee treated Ms. Thone "like a dog." Ms. Kortus spoke to Mr. Vanlaningham and he took care of the problems with the Records Center immediately.<sup>107</sup>

92. The Employee's negative interactions with the staff who reported to her; her inability to lead and motivate the staff; and her failure to provide back-up secretarial assistance when needed had a negative impact on the support staff, and upon the CPD as a whole, causing low morale among the support staff and concern by many of the attorneys in the division.<sup>108</sup> Morale improved following the Employee's departure.<sup>109</sup>

93. The Employee tended not to accept that she needed improvement, and instead placed the fault with other people. She was not willing to accept constructive feedback.<sup>110</sup>

94. During the Employee's nearly four-year tenure with the CPD, she failed to demonstrate that she was suitable for this position by her persistent failure to demonstrate, and her apparent unwillingness to learn, the technical, interpersonal or leadership skills necessary to supervise the CPD, despite repeated efforts to train, coach, and assist her to perform. The Employee had ample opportunity to fulfill the requirements of the PSSS position but failed to do so.<sup>111</sup>

95. Given the Employee's long history in CPD of failing to perform her job duties and her failure to build healthy interpersonal relationships with her staff or supervisors, it is not likely that the Employee would be able to adequately perform the job duties of the PSSS in the CPD in the future.<sup>112</sup>

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<sup>105</sup> Ex. 137, T. 188-191 (Thone); T. 930-933 (Testimony of Joyce Miyamoto).

<sup>106</sup> T. 754-756 (Harris); T. 300-303 (Kortus).

<sup>107</sup> T. 303-305 (Kortus).

<sup>108</sup> T. 306-308 (Kortus); T. 600 (Moses); T. 756-757 (Harris); T. 944 (Miyamoto); T. 857, 865-866 (Testimony of Fred Stephens).

<sup>109</sup> T. 944 (Miyamoto); T. 857, 865-866 (Testimony of Fred Stephens).

<sup>110</sup> T. 609-610 (Moses).

<sup>111</sup> Ex. 20; T. 758-759 (Harris).

<sup>112</sup> T. 758-75 (Harris).

96. In early August 2007, Ms. Kortus began drafting a Letter of Intent to Dismiss the Employee because she felt the situation had become intolerable and she was afraid of losing other staff if the Employee remained in her position.<sup>113</sup>

97. On September 12, 2007, pursuant to Hennepin County Human Resources Rules 17.3B, the Employee was notified of Hennepin County's Intent to Dismiss her from her position as the PSSS in the CPD of the Hennepin County Attorney's Office. The letter identified four primary areas in which the Employee had failed to adequately perform the duties required of the position or to meet expectations:

- (1) Failure to demonstrate the interpersonal or leadership skills necessary to supervise and manage the CPD clerical unit;
- (2) Inability and resistance to perform the core legal secretarial work when and as needed;
- (3) Failure to improve performance despite repeated efforts to coach and train you over a four year period, due to inability and/or reluctance to accept feedback and coaching; and
- (4) Negative and adverse impact on the division.<sup>114</sup>

98. An Administrative Appeal Hearing was held in the Office of the Hennepin County Attorney on September 20, 2007. Mark V. Chapin, Deputy County Attorney, denied the appeal on September 24, 2007.<sup>115</sup>

99. The Employee further appealed her termination to the Office of Administrative Hearings pursuant to Minn. Stat. § 383B.38 by letter dated August 2, 2007. The Chief Administrative Law Judge issued the Notice of and Order for Prehearing Conference and Hearing in this matter on October 18, 2007.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. § 383B.38.

2. The Hennepin County Human Resources Board has complied with all relevant substantive and procedural requirements of statute and rule.

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<sup>113</sup> T. 306-307 (Kortus).

<sup>114</sup> Ex. 20; T. 308 (Kortus).

<sup>115</sup> Ex. 21; T. 762-763 (Harris).

3. Minn. Stat. § 383B.38, subd. 1 provides, in part, that: “[n]o permanent employee in the classified service shall be suspended, demoted, or discharged except for just cause.”

4. Similarly, Hennepin County Human Resources Rule 17.3 provides in relevant part that “[a]n employee who has permanent status . . . shall be dismissed or involuntarily demoted only for just cause based on incompetency/failure to meet job performance requirements, misconduct and/or gross misconduct.”

5. Hennepin County bears the burden of proving by a preponderance of the evidence that there is just cause for taking disciplinary action against the Employee.<sup>116</sup> Just cause may be demonstrated by showing that the reasons for the Employee’s dismissal are substantial and relate to the manner in which she performed her job duties.<sup>117</sup>

6. The County has demonstrated by a preponderance of the evidence that there was just cause for disciplining the Employee.

8. The Employee has not demonstrated by a preponderance of the evidence that extenuating circumstances exist that justify modification of the discipline.

9. Any Finding of Fact more properly characterized as a Conclusion of Law is adopted as such.

10. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference.

Based on the foregoing Findings of Fact and Conclusions of Law, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

### ORDER

IT IS HEREBY ORDERED that:

The Employee’s discharge by Hennepin County from her position as a Principal Support Services Supervisor in the Child Protection Division of the Hennepin County Attorney’s Office is **AFFIRMED**.

Dated: November 19, 2008

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Transcript Prepared by: Kirby A. Kennedy & Associates (Nine Volumes)

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<sup>116</sup> Minn. R. 1400.7300, subp. 5.

<sup>117</sup> *Hagen v. Civil Service Board*, 164 N.W.2d 631-32 (Minn. 1969).

## MEMORANDUM

### Legal Standard

In this matter, Hennepin County is seeking to dismiss the Employee, Judith Wryk, from her employment as a Principal Support Services Supervisor in the Child Protection Division of the County Attorney's Office. She accepted the PSSS job in 2003 under the County's Alternative Placement Program, to avoid being laid off for budgetary reasons from her previous position in the County's Economic Assistance Department.

Under Minn. Stat. § 383B.38 and Rule 17.3 of the Hennepin County Human Resources Rules, no permanent employee in the classified service of Hennepin County can be dismissed except for "just cause." The "just cause" standard as it relates to dismissal of a public employee was defined by the Minnesota Supreme Court in *State ex rel. Hart v. Common Council* as follows:

"Cause," or "sufficient cause," means "legal cause," and not any cause which the council may think sufficient. The cause must be one which specially relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. The cause must be one touching the qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office. An attempt to remove an officer for any cause not affecting his competency or fitness would be an excess of power, and equivalent to an arbitrary removal. In the absence of any statutory specification, the sufficiency of the cause should be determined with reference to the character of the office, and the qualifications necessary to fill it.<sup>118</sup>

This definition of "cause" continues to be the legal standard for assessing the propriety of the dismissal of a public employee.<sup>119</sup> The Supreme Court further explained the test in *Hagen v. Civil Service Board*:

Under this [the *Hart*] definition, it appears that the cause or reason for dismissal must relate to the manner in which the employee performs his duties, and the evidence showing the existence of reasons for dismissal must be substantial.<sup>120</sup>

The definition of "just cause" included in Minn. Stat. § 43A.33,<sup>121</sup> although not controlling in this case, is consistent with the definitions and standards that were articulated by the Minnesota Supreme Court in *Hart* and *Hagen*.

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<sup>118</sup> *State ex rel. Hart v. Common Council*, 53 Minn. 283, 284, 55 N.W. 118, 120 (1893).

<sup>119</sup> *Hagen v. Civil Service Board*, 164 N.W.2d 631-32 (Minn. 1969).

<sup>120</sup> *Id.*, 164 N.W.2d at 632.

<sup>121</sup> That statute, which deals with dismissal of permanent, classified state employees, specifies that just cause "includes but is not limited to, consistent failure to perform assigned duties, substandard performance, insubordination, and serious violation of written policies and procedures, provided that the

## Arguments of the Parties

The County asserts that there was just cause for the Employee's dismissal because the Employee was neither competent nor fit to perform her duties. As summarized in the September 12, 2007, letter notifying the Employee of the County's intent to dismiss her, the County contends that Employee's dismissal was based on her "persistent failure to adequately perform the duties required of the position or to meet expectations, despite repeated efforts to train and coach (and correct) and assist you to perform."<sup>122</sup> In particular, the County asserted that:

- (1) the Employee failed to demonstrate the interpersonal or leadership skills necessary to supervise and manage the CPD clerical unit by engaging in inappropriate and disrespectful interactions with staff, using negatively-charged language, blaming others when issues are not resolved rather than taking responsibility for her own actions, favoring some staff members over others, and failing to accept feedback and coaching for improvement of relationships with her staff;
- (2) the Employee was unable and resistant to performing core legal secretarial work as needed, as illustrated by her negative attitude about performing such work, her unwillingness to accept responsibility for providing back-up support, her excessive need for explanation of tasks, her failure to take initiative to provide substantial assistance to support staff, her lack of technical competence, and her inability to process work in an efficient manner;
- (3) the Employee failed to improve her performance despite Ms. Kortus' repeated efforts to coach and train her over a four-year period, due to her inability or reluctance to accept feedback and coaching, as illustrated by her "needs improvement" ratings in July 2006 and March 2007, her refusal to sign off on performance reviews of her staff once amended by management, and her failure to tell Ms. Kortus of the refusal; and
- (4) the Employee had a negative and adverse impact on the CPD due to her negative interactions with staff reporting to her, her inability to lead and motivate staff, her disruptive and polarizing effect on staff, and her failure to provide adequate back-up secretarial assistance when needed.

The Employee contends that her dismissal was improper and she should be reinstated. She asserts that Ms. Kortus told her that her lack of secretarial experience would not be an issue, and she would not have to do core secretarial duties if she accepted the PSSS position. The Employee challenged the rationale for the written reprimand she received in July 2007, as well as other allegations made by the County in its discharge letter. She maintains that she made progress on the goals set forth in her July 2006 performance evaluation and that she had no further altercations with

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policies and procedures are applied in a uniform, nondiscriminatory manner." Minn. Stat. § 43A.33, subd.

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<sup>122</sup> Ex. 20 at 1.

secretaries, and argues that dismissal is not warranted under the circumstances. She argues that she was terminated due to the personality clashes she had with Ms. Kortus and Ms. Kortus' favored employees, and not for legitimate reasons. She also contends that the failure of the County to give her formal, written performance evaluations on an annual basis throughout her employment or give her a formal Performance Improvement Plan suggests that her shortcomings were not in fact that serious.

## **Just Cause**

After careful consideration of the record and of the arguments made by the parties, the Administrative Law Judge concludes that the County has demonstrated by a preponderance of the evidence that there was just cause for the Employee's dismissal. The County has shown two primary grounds that warrant the termination. First, it is evident that the Employee failed to demonstrate the technical skills necessary to suitably perform the duties required of the PSSS position. She did not develop, over a period of nearly four years, the necessary computer skills and familiarity with the applicable legal requirements and CPD procedures to produce the day-to-day documents required in CPD legal proceedings. Although the Employee was informed before she took the PSSS position that she would be required to serve as back-up to her staff, she failed to accept responsibility for those duties. She did not take the initiative to learn the tasks, nor did she willingly provide that support.

Ongoing efforts to train the Employee on the technical skills required to perform legal secretarial duties and to motivate her to perform those duties were unsuccessful. She was offered training within the office by the secretaries themselves, and word processing and other training outside the CPD. While she ultimately completed the Performance Management Certificate Program as well as three Microsoft Word classes, she shunned opportunities to strengthen her skills by taking on secretarial tasks that would have given her the experience she needed to become technically proficient. It took an excessive amount of time for staff to explain tasks to the Employee, and she was unable to process work in an efficient manner for the attorneys to which she was assigned. Even after nearly four years, the Employee was not sufficiently comfortable with the duties and procedures of the legal secretarial staff to function as a viable support and back-up to the CPD secretarial staff.

Second, the Employee failed to demonstrate the personal interaction and supervisory skills necessary to perform the duties required of the PSSS position. She engaged in a prolonged and consistent pattern of inappropriate interactions and altercations with those she supervised; repeatedly used an inappropriate, demeaning tone of voice and made improper comments to support staff, including Ms. Brown, Ms. Thone and Ms. Gunstrom; repeatedly created conflict and provoked confrontations; failed to de-escalate conflict situations; and consistently failed to resolve office issues. In addition, the attorneys to whom she was assigned found her to have an unpleasant and negative attitude about performing secretarial work.

Despite being coached repeatedly on interpersonal skills and leadership skills, the Employee continued her disrespectful behavior toward the support staff with little

improvement over the nearly four-year period she was in the PSSS position. The Employee did not sign off on performance reviews of her subordinates after they were modified by management, and did not inform Ms. Kortus of her decision, leading to a written reprimand. She also failed to follow her supervisor's directives that she should not question Ms. Gunstrom's schedule and should not contact the temporary agency employing Ms. Brown, further contributing to the low morale in the CPD. The Employee's demonstrated unwillingness to accept coaching or feedback provides further justification for her dismissal from employment.

None of the arguments offered by the Employee compel a different conclusion. It is true, as the Employee asserts, that she told Ms. Kortus that she had no secretarial or legal experience during their pre-hire conversations. But the Employee accepted the PSSS position in lieu of lay-off after being told of the job duties and being given a copy of the job description. Moreover, the Human Resources office believed that the Employee was capable of learning the required secretarial skills with six months to a year, and the Employee was immediately offered training to assist her in that task. And Ms. Kortus met with the Employee to discuss her questions and address job performance issues on nearly a weekly basis over the course of her employment.

The Administrative Law Judge does not find credible the Employee's testimony that Ms. Kortus told her that she would not have to perform core secretarial duties in the PSSS position. The Employee contended that Ms. Kortus told her the secretaries in the Child Protection Division were extremely experienced, well qualified, and self-sufficient, they directed their work themselves, and their duties were not something that she would need to be performing. While Ms. Kortus might well have told the Employee that the secretaries were capable, competent self-directed workers, the strong weight of the evidence shows that Ms. Kortus was absolutely clear in stating that she expected the Employee to learn how to perform the core secretarial duties. The County provided strong evidence that those holding the PSSS position prior to the Employee had performed such secretarial duties. In addition, Ms. Kortus provided forthright and persuasive testimony and documentation of numerous occasions, starting with pre-hire discussions and continuing throughout the Employee's tenure, on which she discussed with the Employee the need for the PSSS to provide back-up and perform core secretarial duties and provided her with copies of the job description.

Even assuming for the sake of argument that the Employee somehow misunderstood what was expected of her before June 2006, the written Employee Performance Appraisal she received at that time explicitly stated "Judith needs to significantly increase her knowledge of and ability to perform support staff duties. This division is lean in the secretarial coverage area. As it is Judith's job to provide that coverage, this supervisor and Judith together set goals over a year and a half ago for her to start learning more of their duties."<sup>123</sup> At the same time, Ms. Kortus instructed the Employee to include secretarial backup in the list of the Employee's duties on the Support Staff Assignments list. In addition, it would not make sense for Ms. Kortus to repeatedly provide hands-on training sessions for the Employee in the legal secretarial

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<sup>123</sup> Ex. 8, page 6.

area if she did not expect the Employee to be learning how to do what the secretaries did. The evidence strongly supports the conclusion that the Employee had ample time to learn the secretarial skills; and that it should have been clear to her long before June 2006 what was expected of her.

The Administrative Law Judge also is not convinced that the failure of the County to give the Employee formal, written performance evaluations on an annual basis or issue a formal "Performance Improvement Plan" suggests that her deficiencies were not that serious. While Mr. Viscasillas, the Human Resources Director for Hennepin County, stated a clear preference for written performance evaluations, he also acknowledged that, if an oral review is done and the manager "did not file anything in writing for whatever reason, we would still encourage them to put it in writing, but that does not mean that the performance review did not occur."<sup>124</sup> Ms. Kortus testified that she did not put the Employee's initial performance evaluation in December 2004 into writing because it would have been a "needs improvement" evaluation and she did not want to discourage the Employee or to put her at a disadvantage as she continued to apply for different positions outside of CPD which might have been a better fit for her. This testimony was logical and credible and supported by Ms. Gohl, who viewed the choice not to put the 2004 evaluation in writing as supportive of the Employee as she tried to develop new skills in an alternative placement situation.<sup>125</sup> Because Ms. Kortus was diagnosed with cancer in November 2005 and was on medical leave and working part-time for a period of time thereafter, the Employee's next performance evaluation, which was in writing, was discussed with her in July 2006. The overall appraisal at that time was "needs improvement," and the "Goals" section of that evaluation served the same function as a Performance Improvement Plan.<sup>126</sup> A written progress report was issued in September 2006,<sup>127</sup> and a follow-up written Special Evaluation was discussed with the Employee in March 2007, again providing an overall rating of "needs improvement."

The failure to issue annual written evaluations in December 2004 and December 2005 did not mean that the Employee lacked feedback from Ms. Kortus on deficiencies in her job performance since they met on nearly a weekly basis throughout the Employee's employment in CPD. It should have been evident to the Employee from the discussions during these meetings that Ms. Kortus had serious concerns about the Employee's performance in the PSSS position and her interpersonal and supervisory skills. In addition, written reviews detailing the specific areas in which the Employee's performance needed improvement were issued in July 2006 and March 2007, well before the Employee's termination in September 2007, and the Written Reprimand issued to the Employee on July 13, 2007, warned that "continued, unprofessional conduct can lead to further discipline, up to and including dismissal."<sup>128</sup> Moreover, in late 2006 and during 2007, the Employee met on several occasions with Janey Gohl from the County's Human Resources office. Ms. Gohl warned the Employee that her

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<sup>124</sup> T. 1073-1074 (Viscasillas).

<sup>125</sup> T. 502 (Kortus); T. 550-552 (Gohl).

<sup>126</sup> Ex. 8.

<sup>127</sup> Ex. 12.

<sup>128</sup> Ex. 18.

behavior and her failure to follow Ms. Kortus' directions could result in reprimands or even termination. Ms. Gohl also encouraged the Employee to consider alternative employment within the County. The Employee rejected Ms. Gohl's suggestions. Under the circumstances, the Employee was given fair notice of her deficiencies and a fair opportunity to demonstrate improvement prior to her dismissal.

The Employee also argues that she made progress on the goals set forth in her July 2006 evaluation, points out that she had no further altercations with secretarial staff after that time, and argues that dismissal is not warranted under the circumstances. While Ms. Kortus acknowledged in the March 2007 Special Evaluation that there had been "no further altercations between [the Employee and her] direct reports" since the last evaluation, she also emphasized that the Employee's defensiveness, minimizing of her own "inappropriate behaviors, such as unprofessional remarks and tone of voice," and her tendency to blame others had made it difficult for Ms. Kortus to coach her and rendered her ineffective as a leader of her own staff. In the same Special Evaluation, Ms. Kortus acknowledged that the Employee had made "some progress" in learning Microsoft Word and in learning to type on a typewriter, but stated that "the amount of work you can accomplish is limited by your lack of WORD and typing skills."<sup>129</sup> Whatever progress the Employee achieved by August 2007 was outweighed by incidents such as the Employee's refusal to sign her own staff's performance reviews, her failure to inform Ms. Kortus of that refusal, her inability or unwillingness to provide meaningful backup to her secretarial staff in July and August of 2007, and her repeated cancellations of meetings with her staff to discuss issues of concern to them, such as Ms. Thone's concerns about the Records Center.

The Employee challenged the rationale for the written reprimand she received in July 2007, as well as other allegations made by the County in its discharge letter. The Employee contends that she was terminated due to the personality clashes she had with Ms. Kortus and Ms. Kortus' favored employees, particularly the May 2006 incident with Ms. Gunstrom, and not for legitimate reasons. The Employee does not dispute that she failed to sign three of her supervisees' evaluations. Nor does she dispute that she withheld her signature because she did not like having to make changes to the evaluations at Ms. Kortus' behest. Her failure to accept feedback or coaching is evident in her unwillingness to acknowledge that the decision to terminate her was based on an extensive pattern of conduct rather than on the single incident with Ms. Gunstrom in May of 2006.

Based upon the record as a whole, it is clear that the Employee failed to perform the duties of the PSSS position in an adequate manner and up to expectations over a period of nearly four years despite repeated coaching, training, and other efforts. Employers may justifiably expect that an employee will perform the duties set forth in a job description and abide by reasonable instructions and directions.<sup>130</sup> The Employee was repeatedly told of her performance deficiencies and given opportunities to show

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<sup>129</sup> Ex. 15.

<sup>130</sup> See *McGowan v. Executive Exp. Transp. Enter., Inc.*, 420 N.W.2d 592, 596 (Minn. 1998); *Bibeau v. Resistance Technology, Inc.*, 411 N.W.2d 29, 32 (Minn. App. 1987); *Campbell w. Minneapolis Star and Tribune Co.*, 345 N.W.2d 803, 805 (Minn. App. 1984).

improvement. She was given more than ample opportunity--almost four years--to adequately perform the duties of the PSSS position, but did not show substantial improvement over that time.

The Administrative Law Judge concludes that the County has demonstrated legitimate reasons and just cause for the Employee's termination.

### **Extenuating Circumstances**

Minn. Stat. § 383B.38 provides that, where the Administrative Law Judge finds that just cause exists for disciplinary action, the disciplinary action may be modified if the employee is able to establish extenuating circumstances that justify lesser disciplinary action.<sup>131</sup> The burden of proof is on the employee to show that the discharge is not justified.

Based on the record as a whole, it is concluded that the Employee has not borne her burden to show that discharge is not justified and some lesser discipline is appropriate. The Employee presented no convincing evidence of extenuating circumstances to show that discharge is not justified. While it is apparent that this position was not a good fit with the Employee's interests and abilities, it is also clear that, rather than make the best of a difficult situation, the Employee refused to step up and try to learn the skills she needed to learn and to get along in a work culture that was outside of her comfort zone. In the end, the failure was the Employee's and not Ms. Kortus'. Ms. Kortus did all she could to try to help the Employee succeed and gave her ample time to do so. Ultimately, the Employee's presence in the CPD could not be justified, given her inability to do what was needed of her and her demoralizing impact on her staff and others in the office.

After careful consideration of the entire record, the Administrative Law Judge concludes that the County has shown by a preponderance of the evidence that just cause exists for its decision to terminate the Employee. The Employee's dismissal from employment is affirmed.

**B.L.N.**

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<sup>131</sup> Minn. Stat. § 383B.38, subd. 1a(e); *State ex rel. Laux v. Gallagher*, 527 N.W.2d 158, 161 (Minn. App. 1995).